

SECTION IV

MCPD CASELOAD AND WORKLOAD

INTRODUCTION

This section describes our approach to measuring workload and case weights, presents the findings from our brief review of these issues, and provides recommendations for further action. In his 1993 report, Spangenberg recommended developing a "uniform method of case counting within the [MCPD], as well as among all of the criminal justice agencies in Maricopa County, so that comparisons can be made of actual caseload in a manner that is clear and reliable." He further stated that the new definition of a case needs to be "agreed upon by all criminal justice agencies to assure that everyone counts the same way."³¹

The 1993 case-counting issue still exists today. That is, there is no uniformity among the criminal justice system agencies in Maricopa County about (1) how a case is defined, (2) when the life of a case begins and ends, and (3) how much work each case involves. Thus, as part of our study, we examined how the MCPD currently counts cases and how that affects attorney workloads.

The MCPD's case counting system is not much different from that used by other Maricopa County criminal justice agencies, and most other jurisdictions in the United States. The differences lie in the definition each agency uses for a case and in determining when the life of a case begins and ends, and how much work is involved. For example, the MCPD does not count cases until after arraignment, even though its attorneys represent clients at the Justice Courts. In effect, the MCPD is undercounting its caseload and workload.

The MCPD's current case counting system provides basic data on primarily three categories of cases: felonies, misdemeanors and probation violations. Each category is assigned a value, one for felonies, one-half for misdemeanors and one-third for probation violations. These values are consistent with the *Joe U. Smith*³² caseload

³¹ Spangenberg, *supra* note 1, p.17.

³² 681 P. 2nd 1374 (1984), *supra*, note 20.

standards that represent the maximum number of cases one attorney can handle in a year.³³

The MCPD also collects data and counts the number of cases each attorney has at various points in time, including pre-arraignment, active, and pending sentencing. Pending cases are an important workload indicator because the higher the pending caseload, the more distraction from and interference with handling any given case. These statistics are valuable for counting the total number of cases handled by the MCPD each year. However, its current system of counting cases does not adequately measure its actual workload.³⁴ It fails to account for the amount of time required for the MCPD to represent clients, does not realistically reflect the complexity of the cases that comprise its workload and provides no context for interpreting the data.

METHODOLOGY

The various sections of our study have focused both on *workload* and *caseload* issues. *Workload* can be measured by including both litigation and administrative services, or may be limited simply to the former. Our focus in this section is on estimating the work involved in handling a specific case, an attorney's caseload, or the totality of MCPD caseload, rather than the administrative and managerial functions necessary to support that work. Thus, we have chosen to focus exclusively on litigation services as our universe. *Case weighting* involves classifying and estimating the number and types of services performed on a case and identifying related "difficulty factors" that affect the time and resources required to provide those services. Administrative functions, although essential, are dealt with elsewhere in this report.

We also examined the issues from both an intra-departmental and inter-departmental point of view. Thus, we prepared a picture of existing practices within the MCPD and

³³ For a more detailed discussion of these and similar maximum caseload standards, see Section II, pp.23-26.

³⁴ The MCPD collects a very substantial amount of data relating to various workload indicators. These indicators appear to be reasonably related to the amount of work done by the department and are more refined than items defined as indicators or tracked by other defender offices. See "Increases in Office Workload" (Exhibits B-7 and B-8 in Appendix B) which includes data relating, not only to the number of jury trials, but to the number of tapes transcribed and subpoenas served.

examined how the other criminal justice agencies, including the other indigent representation agencies, measured cases.

The most commonly used approaches for developing case weights are focus groups, the Delphi method, and the time study method (e.g., time logs, random moment sampling).³⁵ The time and resources available for our study did not allow an exhaustive case weighting analysis. However, we explained to the MCPD how the focus group approach to case weighting works and conducted several focus groups to demonstrate the process. We used these data, in conjunction with case data and information from case files, to help the MCPD develop a framework to evaluate its own workload and demonstrate fiscal accountability.

The PSI focus group methodology used the following steps:³⁶

- Assembled a group of experienced attorneys and staff who described the MCPD's existing case classifications, case weighting, case assignments and case management practices.
- Discussed the events required to complete work on each case type. The PSI team gave the focus groups NLADA's performance standards to use as a starting point to define the events and steps in case processing.³⁷

³⁵ The *Delphi method* was initially developed by the RAND Corporation for the United States Air Force as a forecasting method. The Delphi methodology has been widely used for estimating workload in a variety of criminal justice settings, including public defender offices. In the context of the MCPD, the Delphi method would involve having attorneys and staff participate in exercises and answer questionnaires to estimate their workload. This approach—using attorneys and support staff to define their work and estimate the time required to do it—helps build staff support for the findings for whatever standards are eventually established. *Time and motion studies* would require the MCPD to identify each event that occurs within categories of case types, document the frequency of those events, record how much time attorneys spend on each event, calculate the amount of time an attorney has to handle the workload (the number of hours an attorney would work in a typical year minus vacation, sick time, training, administrative duties and community activities). Thus, the case weight is the time spent for all events in that type of case. The case weight (number of hours) would then be divided into the number of hours an attorney has available for case-related work to determine the number of cases each attorney could handle in a year.

³⁶ See Appendix F for additional background regarding the focus group process.

³⁷ NLADA, *Performance Guidelines for Criminal Defense Representation* (1995).

- Categorized cases by general weight. The more time it takes to work on the case, the higher the weight assigned to that category of case.
- Ranked classes of cases using factors that the focus group participants believed added complexity (or “weight”) to the case. Among the important factors they considered were: severity of the charges, laws (e.g., sentencing guidelines, enhancements and/or mandatory sentencing scheme, victim’s rights), volume of documentary evidence, scientific evidence, number and types of forensic experts involved, number of witnesses listed, existence of a “victim,” multiple defendants, clients’ custody status, applicable plea policies, and the need for translators, investigators and social workers.

The attorney focus groups made some progress in defining subcategories of non-capital felony cases by weight. The following are the results of their initial efforts and are ranked by weight in descending order:

- child sex cases,
- homicides,
- sex offenses (other than child),
- computer crimes and fraud schemes,
- meth and drug labs,
- drug sales and violent (“dangerous”) crimes,
- DUIs and
- Other class 4, 5 and 6 felonies.

Through the focus groups and subsequent discussions with MCPD management, we compiled a picture about existing workload and case weighting practices. Our recommendations about these issues are presented below.

SYSTEMIC ISSUES

RECOMMENDATION 3

Maricopa County needs to develop a uniform definition of a “case” and a case counting and weighting method applicable beyond the MCPD to at least other indigent representation agencies and preferably to the entire criminal justice system.

It was difficult to compare the MCPD's caseload to the other IRA departments and the MCAO because we did not find a uniform description of a case. We heard in interviews that there had been prior efforts by some agencies in the criminal justice system to create a common definition of a case, but that those efforts stalled. We believe it is important that the agencies re-initiate this effort.

We also believe the criminal justice system should develop a common case weighting methodology. For suggestions about how to develop an integrated system-wide case weighting system, we recommend that the MCPD review the Tennessee Case Weighting Studies.³⁸

RECOMMENDATION 4

Maricopa County should develop a uniform, system-wide funding model for addressing caseload and/or workload increases.

Once the County has developed a case weighting model, it needs to re-examine its approach to funding and setting performance expectations using different definitions of case and workload measurements. Maricopa County should take a systemic approach to developing an integrated criminal justice case weighting system to measure the workloads of agencies such as MCPD, IRA, MCAO and the courts. An integrated case weighting system would make all the stakeholders more sensitive to the impact that each agency has on the others and on the entire criminal justice system.

The Maricopa County Attorney has taken a position supporting the development of a uniform, system-wide funding model for addressing caseload and/or workload increases. We believe the County should pursue this effort.

MCPD INTERNAL RECOMMENDATIONS

Case weighting should be regarded as a continuous process, rather than a single event that yields a fixed result. The case weights should be reviewed periodically because the

³⁸ See the Tennessee Public Defender Case Weighting Study and related studies www.comptroller.state.tn.us/orea/reports/index.htm.

weights attributed to various classes of cases will vary over time due to internal MCPD factors (e.g., office structure and attorney experience) and external, governmental and political factors (e.g., prosecutorial and court case management policies). A case weighting system measures the attorneys' workload and could also generate data useful to the MCPD in the budget process and in evaluating its attorneys' performance.

RECOMMENDATION 5

The MCPD should conduct a case weighting study to establish MCPD caseload standards that reflect actual workload and the work required to meet minimum professional standards for defender attorneys.

This recommendation repeats a recommendation made by the Spangenberg Group in its 1993 study of the MCPD. That recommendation has not been implemented. We believe it should be. Unfortunately, we had time only to demonstrate how a case weighting study could be done using focus groups. We believe a rigorous study needs to be funded and conducted.

As mentioned above, there are several approaches to measuring workload/caseload. Whatever methodology the MCPD decides to use, however, it must be understandable and credible, as well as useful. Any assumptions used in the measurement process, including the use of "difficulty factors" to weight cases, must be articulated clearly so that everyone in the criminal justice system—non-attorneys, budget staff, and others outside the indigent defense community—understand the meaning of the numbers and the justification for the formulas.

If the MCPD decides to continue using the focus group methodology we demonstrated to complete development of a case weighting formula, it needs to consider the following.

- Distinguish between cases involving in-custody and out-of-custody clients. While both present difficulties with client access, the MCPD should give additional priority, and therefore additional weight, to cases involving in-custody clients primarily due to the loss of liberty, the cost to the County of incarceration, and higher quality legal representation.

- Recognize that the number and types of witnesses are factors in case complexity. The higher the number, the more time the MCPD will have to spend on the case interviewing each witness, including prosecution arrangements, travel, and telephone calls. If the prosecution has forensic experts (e.g., psychologists, psychiatrists, document examiners, DNA analysts, toxicologists), reports have to be produced, the defense has to hire its own independent experts, and, thus, the case is more complex and more time consuming.
- Incorporate nationally-recognized performance standards, including the standard that requires MCPD attorneys to conduct an independent investigation. This means that they may have to speak to every witness listed by the prosecution, obtain records, and visit the crime scene. The PSI team found MCPD attorneys enthusiastic about incorporating the NLADA Performance Standards into workload measurements. The attorneys, however, cautioned that, due to current caseloads and high turnover, it would be very difficult for them to comply with the NLADA standards at this time.
- Evaluate the impact of automation on MCPD workload. Lack of automation significantly increases workload. For example, automating document generation using system data would increase MCPD efficiency.
- Account for all court appearances, including initial appearance, preliminary hearings, bail review, pretrial conference, pretrial motions (including competency, motions to compel discovery and for sanctions), trial management conference, continuance panels, settlement conference, trials, sentencing hearings, and probation revocation hearings. Requirements for filing motions and attending frequent judicial hearings increase the MCPD's workload. For example, establishment of court procedures requiring MCPD attorneys to file motions for continuances and appear at hearings before different judges to argue the motions increases the time the attorneys must spend on the cases and distracts from other case preparation tasks.
- Factor in attorney experience. Inexperienced attorneys generally work less efficiently and are often unable to recognize good offers for negotiated pleas.

- Validate the case categories and the weights assigned to each category by the focus group by comparing them with indicia of actual work derived from a review of its case files and statistics. Indicators of actual work performed include the number of in-custody clients, and within each category of cases, the number of witnesses, the length of time until disposition, the amount of documentary evidence, and other indicators mentioned above. Though measured by attorney, the work calculation needs to take into account the work of the entire office (including secretaries, investigators, paralegals, trainers and administrators). Thus, it must of necessity include a description of the administrative and support services available to the attorneys for the cases.
- Estimate the number of cases in each category that a single attorney could handle in a year, given his or her experience, in order to determine the annual workload for the department. For example, an attorney may be able to handle 150 Class 4, 5 and 6 felony cases, but only 20 child sex cases, in a year. Because the number of pending cases is also important for the department and the individual attorneys, estimate the number of cases from a variety of categories that an attorney can handle at one time.
- Interpret the validated case weight estimates within the context of authoritative professional standards, such as the NLADA performance standards, assuming that MCPD has sufficient staff and resources to meet those standards. We recommend that as part of developing a case weighting system, the MCPD review the NLADA standards to determine which are acceptable and which they currently comply with. The MCPD could either modify the NLADA standards to reflect local practice or change its practice to adopt the standards.

RECOMMENDATION 6

The MCPD should articulate general policies or practices that affect all case categories and link each category to specific policies or practices affecting that category.

The MCPD's workload capabilities are directly linked to the resources available to it and to the efficiency and cooperation of the other stakeholders in the criminal justice system. In developing a case weighting method, the MCPD has to factor in the impact of its own policies, practices and structure on its ability to handle the workload. It also

must consider the policies, practices and procedures of other stakeholders in the criminal justice system, such as the County, the County Attorney and the courts. Exhibit V-1 identifies some of these internal and external factors that should be considered along with those mentioned earlier in this section.

<p align="center">EXHIBIT IV-1 SOME FACTORS TO CONSIDER IN DEVELOPING A CASE WEIGHTING METHOD</p>
<p align="center">Internal Factors</p> <ul style="list-style-type: none"> · Case assignments (e.g., the number of courts an attorney is assigned to, how early the attorney receives the case and starts working on it, variety of category of cases in the caseload) · The quality and range of support (e.g., administrators, investigators, social workers, process servers, secretaries, transcribers, translator services) · Attorney to support staff ratios · Travel and scheduling · Use of automation/technology · Equipment (e.g., computers, fax machines, cell phones) · Legal research capabilities · Access to experts · Office space and facilities
<p align="center">External Factors</p> <ul style="list-style-type: none"> · County policies (e.g., pay and job classification policies, funding decisions) · County Attorney policies, including: <ul style="list-style-type: none"> · Pleas and sentencing (impact on plea negotiations and trial rates); · Early or timely and complete discovery; · Filing notice of intent to invoke the death penalty cases and later abandoning the intent (the death penalty requires MCPD to assign two defense attorneys); · Prosecutor interference with or lack of support of efficient MCPD access to witnesses, and lack of efficient prosecution witness lists; · Plea cut-offs; · Guns; · Lack of assignment of a deputy county attorney until two weeks after preliminary hearing where the MCAO representation is horizontal; · No notice to MCPD where County Attorney obtains supervening indictments; and · Too many cases sent to preliminary hearing (partly due to lack of grand juries).

EXHIBIT IV-1
SOME FACTORS TO CONSIDER
IN DEVELOPING A CASE WEIGHTING METHOD

External Factors (cont.)

- Court procedure and structures:
 - Chronic judicial case management restructuring is disruptive to timely case disposition;
 - Fragmentation of court procedures—unnecessary splitting of court procedures (e.g., separate plea, continuance, sentencing, and probation violation judges in Superior Court and between Justice and Superior Courts);
 - MCPD workload increases as available judicial time increases—in direct, if not geometrical, proportion;
 - Court backlogs create defender backlogs (e.g., judges setting only 6-8 trials per week);
 - Court willingness to enforce rules of procedure, including those requiring prompt discovery;
 - Courts readily granting continuances so as to create an expectation that cases will not be tried as scheduled; and
 - The effectiveness of court procedures in bringing attorneys and clients together at times propitious for consultation and resolution of cases.
- Specialty police and prosecution units
- Jail policies and practices impacting on access to in-custody clients
- The degree of front-loading in the system, i.e., the earlier in the process the disposition—not just speeding up or compressing the process—the greater the workload can be
- The speed with which each category of case moves— the faster the case disposition, the greater the workload and the pressure
- Access to witnesses, including victims
- Victims' rights (e.g., required notice to victim delays scheduling) and inability to interview victims who decline
- Delay in minute entries
- Language problems—need for translators and translations
- Interview transcription
- Law enforcement failure to timely provide reports and evidence
- Travel to witness interviews
- County administrative demands (especially where they are greater than those imposed on the County Attorney)

County policies have a major impact on the MCPD. The pay and job classification policies affect the MCPD's ability to hire and retain qualified attorneys and staff. Turnover is a major negative factor because, as attorneys leave, the remaining attorneys have to assume responsibility for higher caseloads. The inefficiency of handling unfamiliar caseloads, which involves deciphering other people's materials and thoughts

and, perhaps, re-doing their work, also contributes to the workload impact of attorney and staff turnover.

Funding issues are also critically important for the MCPD's workload. Other IRA defender entities appear to believe the MCPD is overworked and they are willing to accept some of the additional work from the MCPD because they have resources to do so. The County's approach to funding these agencies in this manner will result in MCPD, ostensibly the primary defender agency, doing less work and less serious work and the other defender entities doing more work. Therefore, the County should reevaluate its expectations of the workload that MCPD can realistically carry in light of this funding pattern.